

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARK A. SCOTT,

Plaintiff,

vs.

CASTILLO, et al.,

Defendants.

1:20-cv-00598-ADA-GSA-PC

**ORDER GRANTING DEFENDANT'S EX-PARTE MOTION TO MODIFY SCHEDULING ORDER (ECF No. 32.)**

**ORDER EXTENDING DEADLINES FOR ALL PARTIES**

**New Deadline to Complete Discovery:**

**March 12, 2023**

**New Deadline to File Dispositive Motions:**

**April 12, 2023**

**I. BACKGROUND**

Mark Anthony Scott (“Plaintiff”) is a former prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds against defendant C/O Castillo for use of excessive force in violation of the Eighth Amendment.<sup>1</sup>

On March 1, 2022, the court issued a Discovery and Scheduling Order establishing pretrial deadlines for the parties, including a discovery deadline of August 1, 2022 and a

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<sup>1</sup> On November 16, 2021, the Court issued an order for this case to proceed only with Plaintiff’s excessive force claims against defendant C/O Castillo, and dismissing all other claims and defendants. (ECF No. 19.)

1 dispositive motion filing deadline of October 1, 2022. (ECF No. 26.) These deadlines have  
2 expired.

3 On December 7, 2022, Defendant filed an ex-parte motion to modify the Scheduling  
4 Order. (ECF No. 32.)

5 **II. MOTION TO MODIFY SCHEDULING ORDER**

6 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
7 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,  
8 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the  
9 modification of a scheduling order must generally show that even with the exercise of due  
10 diligence, they cannot meet the requirement of the order. Id. The court may also consider the  
11 prejudice to the party opposing the modification. Id. If the party seeking to amend the scheduling  
12 order fails to show due diligence the inquiry should end and the court should not grant the motion  
13 to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

14 Defendant requests that discovery be reopened for 90 days, with dispositive motions due  
15 within 120 days. Defense counsel informs the Court that due to an unexpected family emergency  
16 he was off work and out of state for many days and did not return until the discovery deadline  
17 had expired. (Declaration of Matthew Stohl, ECF No. 32-2 ¶¶ 1, 5, 6.) Plaintiff agreed to file a  
18 joint request for a continuance but failed to sign and return the agreed-upon stipulation and has  
19 not responded to communication attempts. (Id. ¶¶ 8-12.)

20 The Court finds good cause to grant Defendant's motion to modify the deadlines in the  
21 Court's Discovery and Scheduling Order. Therefore, Defendant's motion to modify the  
22 Scheduling Order, filed on December 7, 2022, shall be granted.

23 **III. CONCLUSION**

24 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that:

25 1. Defendant's ex-parte motion to modify the Court's Scheduling Order, filed on  
26 December 7, 2022, is GRANTED;

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28 2. Discovery is now reopened, with a deadline of March 12, 2023 to complete

discovery, including the filing of motions to compel;

3. The new deadline for filing dispositive motions is April 12, 2023; and
4. All other provisions of the court's March 1, 2022 Discovery and Scheduling Order remain the same.

IT IS SO ORDERED.

Dated: December 8, 2022

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE